Dig. 354, 13 Id. 974), and where the verdict is clearly without evidence to support it or against the weight of the evidence, the trial court should set it aside, and if it does not do so it is reversible error, as stated in 10 Va.-W. Va. Enc. Dig. 453, et seq., this is the first statement of the rule laid down in syl. 6 that we have seen in a Virginia case. The rule is well supported by authority and, in addition to the cases cited in the opinion, it will be found laid down in United States *v.* Candler (D. C.), 65 Fed. Rep. 308, that a jury may consider the improbability of positive statements made by an unimpeached witness when there are circumstances in evidence tending to lessen the probability that such testimony is true. See, also, Quock Ting *v.* United States, 11 Sup. Ct. 733, 851, 140 U. S. 417, 35 L. Ed. 501, to same effect, and in Com. *v.* Loewe, 162 Mass. 518, 39 N. E. 192, it is said that the jury is not bound to believe testimony because it is uncontradicted and unimpeached.

As holding that a verdict based on uncontradicted evidence is not to be disturbed, see Meyers *v.* Hunt, 17 N. Y. Supp. 637; Scranton *v.* Tilley, 16 Tex. 183; Nelson *v.* Chicago, etc., R. Co., 35 Minn. 170, 28 N. W. 215. And for a case holding that a verdict, if contrary to uncontradicted and unimpeached evidence, though almost entirely that of the plaintiff himself, will be set aside on appeal, see McAfee *v.* Robertson (1874), 41 Tex. 355, where it is said at p. 358: "So long as parties are permitted by law to testify in cases in which they are interested, and they are neither discredited nor contradicted, we see no ground for a total disregard of their testimony more than that of any other witness." But in Virginia and West Virginia, interest may always be shown as affecting credibility. See Grayson *v.* George, 85 Va. 908, 9 S. E. 13; Moats *v.* Rymer, 18 W. Va. 642, 41 Am. Rep. 703. See, also, 13 Va.-W. Va. Enc. Dig. 973. In Central, etc., R. Co. *v.* Woolsey, 112 Ga. 365, 37 S. E. 392, a verdict contrary to uncontradicted and unimpeached evidence was set aside as contrary to law. See, also, to same effect, Roth *v.* Smith, 41 Ill. 314; Tompkins *v.* Corry, 14 Ga. 118; Sullivan *v.* Board of Comm'rs, 5 Kan. App. 880, 47 Pac. 165. See, also, Lester *v.* Snyder, 12 Colo. App. 351, 55 Pac. 613, where the verdict on an improperly directed issue out of chancery was contrary to uncontradicted and unimpeached evidence, and was set aside on appeal.

CHESAPEAKE & O. RY. CO. *v.* PEW.

March 11, 1909.

[64 S. E. Rep. 35.]

1. Statutes (§ 226*)—Construction—Adoption from State.—Where a statute has been adopted from another state, it will be presumed that the Legislature likewise adopted the construction placed upon the statute by the courts of the state from which it came.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 307; Dec. Dig. § 226.* See, also, 12 Va.-W. Va. Enc. Dig. 769.]

2. **Carriers (§ 108*)—Liability—Statutes.**—The first sentence of Va. Code 1904, § 1294c (24), rendering the initial carrier receiving goods for transportation liable for any damage caused by its negligence or the negligence of any connecting carrier to which such property may be delivered, having been taken from the Missouri statute, ap-

---

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

plies, as construed by the courts of that state, the English rule of liability to the initial carrier only where there is an initial and connecting carrier, and does not affect the liability of a carrier, where the transportation is wholly over its own line.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. § 108.* See, also, 3 Va.-W. Va. Enc. Dig. 683, 685, 693.]

3. Statutes (§ 211*)—Construction—Title.—This construction of the section of the statute cannot be affected by the insertion by the compiler of the Code, merely as a matter of convenience, of a title in black-faced type immediately before the section.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 288; Dec. Dig. § 211.* See, also, 12 Va.-W. Va. Enc. Dig. 761.]

4. Statutes (§ 211*)—Construction—Title.—In the construction of a statute, the title of an act is of some value as a guide to the intention of the Legislature.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 288; Dec. Dig. § 211.* See, also, 12 Va.-W. Va. Enc. Dig. 761.]

5. Carriers (§ 108*)—Carriage of Goods—Liability—Statutes.—The effect of Va. Code 1904, § 1294c(24), providing that no contract shall exempt such a common carrier from the liability of a common carrier, which would exist had no contract been made or entered into, is to relegate the carrier to its common-law liability in cases where no contract relating thereto was made.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. § 108.* See, also, 3 Va.-W. Va. Enc. Dig. 683, 685.]

6. Carriers (§ 218*)—Carriage of Live Stock—Limiting Liability.—Under Va. Code 1904, § 1294c (24), providing that no contract shall exempt any such common carrier from the liability of a common carrier, which would exist had no contract been made or entered into, a carrier of live stock may not contract to limit its liability for loss or injury to the cattle to less than their true value, whether the loss or injury is caused by its negligence, or not, if it is not caused by the vis major, or the inherent qualities of the cattle or the fraud of the shipper.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. § 218.* See, also, 3 Va.-W. Va. Enc. Dig. 685, 693.]

Error to Circuit Court of James City and City of Williamsburg.

Trespass on the case by J. N. Pew against the Chesapeake & Ohio Railway Company for loss of and injury to cattle shipped. From a judgment for plaintiff, defendant brings error. Affirmed.

R. G. Bickford and *S. Q. Bland,* for plaintiff in error.

N. L. Henly, C. B. Garnett, and *Braxton, Williams & Eggleston,* for defendant in error.

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

WHITTLE, J. This is an action of trespass on the case to recover damages arising out of an intrastate shipment of cattle, the property of the defendant in error, J. N. Pew, over the road of the plaintiff in error, the Cheasapeake & Ohio Railway Company, the initial carrier. Some of the cattle were killed and others injured in course of transportation under circumstances which it is alleged render the carrier liable for the damage sustained.

To a judgment against the company for the value of the cattle, this writ of error was awarded.

The principal assignment of error draws in question the ruling of the circuit court denying the validity of certain stipulations contained in the bill of lading, whereby, in consideration of a reduced rate for transportation of the cattle, the company seeks to limit the measure of its duty as a common carrier, and the shipper obligates himself to accept an agreed value, less than the true value of the cattle, in the event of loss for which the carrier is responsible.

The company insists that in no event can it be held answerable in damages under a correct construction of section 1294c(24), Va. Code 1904, unless the plaintiff proves that the injury to the cattle resulted from its negligence, and, in that event, that the amount of the recovery must be limited to the agreed value of the cattle.

The trial court resolved both propositions against the contention of the company, instructing the jury that if they believed from the evidence that the defendant company received the cattle for transportation, and that they were killed, lost, or destroyed, they must find for the plaintiff, unless such killing, loss, or destruction was due to the act of God, or the public enemy, or the peculiar nature or inherent qualities of the cattle, or to the act or fault of the shipper.

The court, moreover, told the jury, that the stipulation in the bill of lading limiting the value of the cattle, in case of loss, to an amount less than their true value, was invalid.

The correctness of this ruling depends upon the proper construction of section 1294c(24).

The first sentence of the first paragraph of that section renders the initial carrier, receiving goods for transportation, liable for any loss or damage caused by his negligence or the negligence of any connecting carrier to which such property may be delivered, or over whose lines such property may pass; and the fact of loss or damage in such case shall be prima facie evidence of negligence. This provision, except to the extent to which it undertake to make the initial carrier liable for loss or damage occurring on the lines of connecting carriers, is simply declaratory of the common law. The next provision allows the

initial carrier to recover from the connecting carrier the amount of any loss, damage, or injury it may be required to pay to the owner of such property on account of the latter's negligence. Then follows the provision upon which the recovery in this case is founded, namely, that: "No contract, receipt, rule or regulation shall exempt any such carrier, railroad or transportation company from the liability of a common carrier which would exist had no contract been made or entered into."

This enactment is a composite piece of legislation. The first sentence of the first paragraph was taken from the Missouri statute (Laws Mo. 1879, p. 171; Rev. St. Mo. 1889, § 944), while the concluding sentence of the paragraph was adopted from the Iowa statute (Code Iowa 1897, § 2074).

It is a familiar rule in the interpretation of statutes that where a foreign statute, which has received the construction of the courts of the state from which it comes, has been incorporated into the statute law of this state, it will be presumed that the Legislature likewise adopted the construction placed upon the statute by the courts of the foreign state. Doswell *v.* Buchanan, 3 Leigh, 394, 410, 23 Am. Dec. 280; Danville *v.* Pace, 25 Gratt. 1, 5, 18 Am. Rep. 663; N. & W. Ry. Co. *v.* Cheatwood's Adm'r, 103 Va. 356, 367, 49 S. E. 489.

Applying that rule to the interpretation of the statute in question, we find that the Missouri courts hold that the liability of an initial carrier, with respect to acts done on its own line, remains as at common law. Hurst *v.* St. Louis, etc., Ry. Co., 117 Mo. App. 25, 94 S. W. 797; Ball *v.* Wabash, 83 Mo. 574; McCann *v.* Eddy, 133 Mo. 59, 33 S. W. 71, 35 L. R. A. 110.

So, also, as to the concluding sentence of the first paragraph of section 1294c(24), taken from the Code of Iowa, the courts of that state have uniformly held invalid contracts exempting common carriers from their common-law liability, either with respect to the amount or degree of their liability as insurers. McDaniel *v.* Chicago & N. W. R. Co., 24 Iowa, 412; McCoy *v.* K. & D. M. R. Co., 44 Iowa, 424; McCune *v.* B., C., R. & N. Ry. Co., 52 Iowa, 600, 3 N. W. 615; Lucas *v.* Ry. Co., 112 Iowa, 594, 84 N. W. 673.

In considering this subject, Hutchinson on Carriers (3d Ed.) § 237c, observes: "In some of the states, however, it has been deemed contrary to the true policy of the state to permit the carrier to limit his common-law liability by any contract whatever. Prohibition of such contracts has been declared by statute in Kansas, Iowa, Texas, while in Nebraska and Kentucky they are forbidden by the Constitution."

See, also, a full and valuable discussion by Judge Freeman of "Limitation of Carrier's Liability in Bills of Lading," in notes to Chicago, etc., Ry. Co. *v.* Calumet, etc., Farm, 194 Ill.

9, 61 N. E. 1095, 88 Am. St. Rep. 68, 74, et seq. At pages 129, 130, 88 Am. St. Rep., the learned annotator says: "In a few of the states this has been carried to the extent of prohibiting a common carrier from in any way limiting his liability as it exists at common law. Such prohibitions are to be found in the Constitutions of Kentucky and Nebraska, and by statute in Iowa and Texas.

The Missouri cases, *supra,* show that the liability of the initial carrier for acts done on its own line is that of an insurer, as at common law, and that the object of the Missouri statute, corresponding to the first sentence of the first paragraph of section 1294c(24), is to apply the English rule of liability to the initial carrier, where there is an initial carrier and a connecting carrier, and does not affect the liability of a carrier where the transportation is wholly over its own line.

It follows therefore that the first sentence of the section has no application to the case in judgment, which is controlled by the concluding sentence of the first paragraph, as interpreted by the decisions of the Iowa courts to which reference has been made.

Nor is this view of the enactment influenced by the title in black-faced type found at the head of the section. That title was inserted by the compiler of the Code as matter of convenience.

The original act, which is known as the "Claytor act," was passed May 16, 1903, under the title, "An act prescribing the liability of common carriers, railroads or transportation companies for any loss, damage or injury to property caused by its negligence or the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose line such property may pass." Acts Ex. Sess. 1902-03-04, p. 388, c. 258. The Claytor act was carried into the Code by the compiler as section 1294*l*. On January 18, 1904, however, the Legislature passed a new act, entitled "An act concerning public corporations." That statute re-enacts the Claytor act and is embodied in Va. Code 1904 as section 1294c(24). Acts Ex. Sess. 1902-03-04, p. 968, c. 609.

We are not unmindful of the fact that the title of an act is not infrequently of value in the exposition of statutes, as a guide to the intention of the Legislature; but there is nothing in the title to the present enactment to divert us from a meaning plainly to be gathered from the history of the legislation, and more especially as our conclusion is in harmony with the manifest public policy of the state.

Having thus reached the conclusion that the case comes within the control of the provision in section 1294c(24) that "no contract, receipt, rule, or regulation shall exempt any such common

carrier, railroad or transportation company from liability of a common carrier which would exist had no contract been made or entered into," the plaintiff in error is necessarily relegated to its common-law liability. It therefore only remains to inquire what the liability of a common carrier is with respect to goods delivered to him for transportation, under the doctrine of the common law, in the absence of all contract whatsoever on the subject.

That question was definitely answered in England in the year 1785, by the decision of the Court of King's Bench, in the case of Forward *v.* Pittard, 1 Term R. 27. In that case the plaintiff delivered to the defendant, a common carrier, 12 pockets of hops to be carried to Andover and forwarded to Shaftsbury by the carrier's wagon. The hops were consumed by accidental fire while in transit, without negligence on the part of the defendant. Lord Mansfield delivered a notable judgment in the case, in which, among other things, he said: "The question is whether the common carrier is liable in this case of fire. It appears from all the cases for 100 years back that there are events for which the carrier is liable independent of his contract. By the nature of his contract, he is liable for all due care and diligence, and for any negligence he is suable on his contract; but there is a further degree of responsibility by the custom of the realm—that is, by the common law, a carrier is in the nature of an insurer. It is laid down that he is liable for every accident, except by the act of God, or the King's enemies."

This statement of the common-law rule has been followed by this court in Murphy, Brown & Co. *v.* Staton, 3 Munf. 239, and Friend *v.* Woods, 6 Grat. 189, 192, 52 Am. Dec. 119.

The recent case of C. & O. Ry. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566, 3 L. R. A. (N. S.) 183, arose under section 1294c(25), or rather under the corresponding section (1296) of the Code of 1887, and the court held that "a contract with a common carrier, whereby, in consideration of a reduced rate, a shipper agrees to accept an agreed value, less than the true value, of goods lost by the negligence of the carrier, is invalid. * * *"

Our conclusion is that, so far as the rights and liability of an initial carrier with respect to goods lost on its own line is concerned, there is no difference in legal effect between a liability arising under the last sentence of the first paragraph of section 1294c(24) and under 1294c(25), except, of course, that liability under the latter clause is predicated on the negligence of the carrier, while under the former it is not. That is to say, a common carrier can no more exempt itself by contract from liability for loss or injury to goods committed to it for transportation in the one instance than in the other.

There are numerous minor assignments of error, which have received careful consideration, but which need not be noticed

further than to observe that the construction which we have placed on section 1294c(24) eliminates the main contentions of the plaintiff in error, that the admissible evidence in the case is plainly sufficient to sustain the finding of the jury, and that no more favorable verdict for the defendant could properly have been rendered. See Taylor *v.* B. & O. R. Co., 62 S. E. 798, 2 Va. App. 650, 651, and authorities cited.

We find no reversible error in the record, and the judgment must be affirmed.

Affirmed.

Note.

This decision will be found commented upon under "Correspondence," post, p. 170, and is an important one, as is its companion decision in Southern Express Co. *v.* Keeler. Taken together they absolutely forbid a transportation company or common carrier from qualifying its common-law liability by special contract, in any manner whatever.

At common law the carrier's liability is that of a quasi insurer, but both at common law, and in Virginia under § 1294c (25), he could qualify his liability, **except as to his own negligence,** by special contract (see 3 Va.-W. Va. Enc. Dig. 683, 685, 693), but by this clause of § 1294c (24) it is **now held** that the legislature manifestly intended "to deprive the common carrier of the right to thus limit his liability and to relegate him to his common-law rights and responsibilities independent of contract."

The court bases this sweeping prohibition upon its construction of the last clause of the first paragraph of § 1294c (24), making it apply to **all common carriers or transportation companies** instead of merely to the initial carrier who receives a shipment for delivery to a connecting carrier, to whom clearly the remainder of the section is alone applicable.

This is certainly the scope of the decision in the Southern Express Co. cases where the shipment was over the line of one carrier only, and while in the principal case the carrier on whose line the loss or injury occurred is spoken of as the "initial carrier," it is not clear from the facts whether a delivery to a connecting carrier was intended or not. Probably it was, but certainly the loss occurred on the line of the carrier to whom the property was delivered, and the clause in question is construed as applicable to him, if not to all carriers.

Let us consider, first the **language and context** of this clause; and second, the **consequences** of this construction. Laying aside the fact that the compilers of the code evidently thought that the whole statute related only to initial and connecting carriers, as shown by the catchlines at the head, the **first** sentence clearly refers only to the liability of an initial carrier, as is expressly stated by the court, and "does not affect the liability of a carrier where the transportation is wholly over its own line." (See p. 143 of opinion.) The **second** provision relates merely to the recourse of the initial carrier on the connecting carrier when he has had to pay for a loss. Then follows the **third** provision or clause, of the **same paragraph,** namely, that: "No contract," etc., "shall exempt *any such* common carrier, railroad or transportation company from the liability of a common carrier which would exist had no contract been made or entered into." (Italics ours.) This clause, the court holds, applies to the liability of a carrier where the transportation is wholly over its own line, and is held in Southern Express Co. *v.* Keeler, post, if not in the principal case, to apply to any shipment by a transportation company or common carrier

where no delivery to a connecting carrier is even contemplated by the parties. Does not this do violence to the close connection of this clause with the remainder of the paragraph, and its application to the same subject matter as what precedes, as shown by the use of the word "such," and, confessedly (see p. 143), ignore the indication given by the title of this act, as originally enacted, as to its scope? And then follows another paragraph of same section relating solely to initial and connecting carriers.

What is said in the opinion as to this provision being adopted from the Iowa statute and bringing with it the construction placed upon it by the Iowa court, is undoubtedly true, but the Iowa statute was **general in its application** to **all** common carriers, and not a part of a statute prescribing the liabilities of the initial carrier receiving goods for delivery to a connecting carrier. Undoubtedly it invalidates any contract or receipt attempting to vary the common-law liability of such initial carrier as enlarged by the first clause, but the question is, can it be applied to any and all carriers, as is done in Southern Express Co. *v.* Keeler. The construction by the Iowa courts is hardly anything more than that the statute means what it says, and that contracts by the carriers to whom it is applicable can not affect the amount or degree of their liability. The only question is to whom is it applicable. Determine that and the effect is plain.

An important consideration in determining the proper construction of this clause is how it best agrees with other statutes or sections in pari materia. We have considered its relation to the other clauses of the same section; now look at § 1294c (25), which immediately follows it. By that section the legislature long ago said that a common carrier **cannot exempt itself from liability for** loss or **injury caused by its own negligence.** Does not this construction of the clause in question render absolutely useless and ineffectual § 1294c (25), in that it goes further and forbids and avoids **any contract at all** exempting from liability? Why, the older section is as completely put out of business as the flint lock musket was by the percussion weapon! If, by this clause, the legislature has forbidden any contract at all for exemption, surely a prohibition of contracts exempting merely from negligence has become superfluous!

And if this clause is limited in its application to initial carriers in cases of shipments contemplating delivery to a connecting carrier, but where the loss or damage is suffered before such delivery, i. e., on the line of the initial carrier, and to be construed as prohibiting any exemptive contracts by them, is not the difficulty equally as great? This would allow other carriers to contract for certain exemptions from liability **not due to negligence,** and deny this right to an initial carrier who suffered a loss on his own route, merely because, if the loss had not been suffered, the goods were to have been delivered to a connecting carrier, and the reason or justice for this distinction will be hard to discover.

It may well be asked, why did the legislature, when they enacted § 1294c (25), which in reality merely enacts the common-law rule in statutory form, stop with that if they intended to further restrict the carrier's liberty of contract, or rather, why did they not amend and re-enact this section, if, when § 1294c (24) was enacted as it now stands, and when the whole code was re-enacted in 1904, they intended, as the court in the Southern Express Co. case says, "to deprive the common carrier of the right to thus limit his liability and to relegate him to his common-law rights and responsibilities independent of contract," instead of embodying so important a change in the concluding portion of a statute hardly strictly in pari materia?

On the other hand, discard this construction, and let the last clause

stand merely as a prohibition against the evasion of the previous clauses of that section by special contract, and all these difficulties are avoided, and the operation of § 1294c (25) is undisturbed, and the reading of so important an amendment into the statute law of the state, by such a construction, avoided. This construction never seems to have so much as occurred to the court in its consideration of the case of C. & O. R. Co. *v.* Beasley, 104 Va. 788, 52 S. E. 566, although it would have been equally applicable there, as this clause was in full force then (1903). The truth is probably that no one even suspected the existence of such a sting for the carriers in the tail of this innocent paragraph.

These decisions will place Virginia among the few states, such as Kansas, Iowa, Texas, Nebraska and Kentucky, that go "to the extent of prohibiting a common carrier from in any way limiting his liability as it exists at common law." See Judge Freeman's note in 88 Am. St. Rep. 68, 129, 130.

With regard to the force of the word "such," it may be said that when used in the latter part of a sentence it is almost always to be construed as referring to the subject of the preceding part of the same sentence, and when used in another sentence of the same paragraph or section it generally refers to the last antecedent, unless the meaning of the sentence would thereby be impaired. It is a descriptive and relative word. See "such" in 12 Va.-W. Va. Enc. Dig. 1017, and 7 Words and Phrases 6750-6754, where many cases construing it will be found set out. See particularly Hallam *v.* Jones, Gilmer, 142, 143, where the generality of the term "all attachments" is held to be restricted to attachments for debt by the use of the words "such attachments" in another section upon the same topic. See, also, Redford *v.* Winston, 3 Rand. 156, referring to this case. And see Laidley *v.* Kline, 23 W. Va. 565, 576. See the recent case of Willis *v.* Kalmbach, 64 S. E. 342, where the comprehensive word "all" was held to be limited by a consideration of the history and purpose of the section of the schedule where it occurred.

The following general principles, though elementary, seem to us to be of weight in determining the proper construction of this clause: In determining the intention of a statute, the court must look to the context, and all statutes in pari materia should be read and construed together, as if parts of the same statute and enacted at same time, and so interpreted that all may, if possible, stand together. See 12 Va.-W. Va. Enc. Dig. 760, 761.

And there is a presumption against a change of the law by implication, particularly when there has been a general revision, embodying both the old law and the provision relied on as a change. The old law is not changed unless an intention to change it plainly appears in the new. See 12 Va.-W. Va. Enc. Dig. 764.

The rule of **Noscitur a Sociis** is also potent to fix the meaning of a word or phrase by reference to the meaning of other words or phrases with which it is associated. General language may thus be limited in its operation or effect. See 12 Va.-W. Va. Enc. Dig. 769. Under these references numerous cases in Virginia and West Virginia will be found illustrating and applying the above principles.